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OFFICE OF PETITIONS

In re Application of :
Czarnek et al. :
Application No. 09/898,313 : DECISION ON PETITION
Filed: 3 July, 2001 :
Atty Docket No. AMT-111US :

This is a decision on the petition filed on 22 April, 2005, under 37 CFR 1.137(b),¹ to revive the above-identified application.

The petition is **GRANTED**.

The application was filed on 3 July, 2001. On 20 October, 2003, a non-final Office action was mailed, setting forth a three (3) month period for reply. No reply having been received, the

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

application was held abandoned 21 January, 2004. Notice of Abandonment was mailed on 18 May, 2004.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay.² In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that petitioner herein was ever empowered to prosecute the instant application. If petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney documentation must be mailed. A courtesy copy of this decision will be mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

Petitioner has submitted a three (3) month extension of time fee of \$510.00. In this regard, an extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply.³ As the extension of time filed on 22 April, 2005, was filed after the maximum extendable period for reply to the Office action mailed on 20 October, 2003, the fee is unnecessary and it is appropriate to apply it towards the petition fee. As such, the \$510.00 paid on 22 April, 2005, will be credited to counsel's deposit account, No. 23-0650.

Receipt of the small entity status statement filed on 22 April, 2005, is acknowledged. Small entity status will apply.

The application is being referred to Technology Center Art Unit 3764 for further processing.

² See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1208 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).

³ See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



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